



## MEMORANDUM ENDORSED

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December 3, 2021

**VIA ECF**

Hon. Gregory H. Wood  
United States District Judge  
Southern District of New York  
500 Pearl Street, Courtroom 12C  
New York, NY 10007

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 12/5/21

Re: *Kelley v. Morning Bee, Inc., et al.*, 1:21-cv-08420 (S.D.N.Y.)

Dear Judge Wood:

This firm represents Defendants Morning Bee, Inc. and Apple Inc. (collectively, “Defendants”) in the above-captioned action. We write to respectfully ask that the Court stay mediation in this case until after the Court rules on Defendants’ anticipated motion to dismiss. Plaintiff consents to this request. Granting such request will not prejudice any party.

Prior to this start of this litigation, the parties exchanged substantive letters regarding Plaintiff’s claim. Unfortunately, the parties were unable to resolve their differences, and Plaintiff commenced this copyright infringement lawsuit. By Order dated October 13, 2021, Your Honor referred this matter for mediation to the Court-annexed Mediation Program and ordered that the mediation take place at least two weeks prior to the Initial Pretrial Conference scheduled for January 24, 2022. Dkt. 6. However, Defendants do not believe that mediation would be fruitful at this time because of the significant differences in the parties’ assessments of the merits of the claims. Therefore, the most efficient course forward for both the parties and the Court would be to stay mediation pending the Court’s ruling on the legal sufficiency of Plaintiff’s claims.<sup>1</sup>

Respectfully,

DAVIS WRIGHT TREMAINE LLP

/s/ *Samuel Bayard*

Samuel Bayard

<sup>1</sup> Defendants deadline to Answer the Complaint or otherwise move is January 3, 2022. Dkts. 11, 15. Pursuant to the Court’s Individual Practices, Defendants plan to file a pre-motion letter requesting a pre-motion conference to discuss Defendants’ anticipated motion to dismiss.

November 9, 2021

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Copy to: All counsel via ECF

Application granted. The Court's October 13, 2021 order referring this case to mediation, Dkt. No. 6, is terminated. In the event that the parties wish for the Court to refer them to mediation in the future, they may do so.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 16.

SO ORDERED.

Dated: December 5, 2021  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge